

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

DONALD W. WALKER,)
)
Plaintiff,)
)
v.) No. 07-00540-CV-W-FJG
)
MICHAEL J. ASTRUE,)
Commissioner, Social Security)
Administration,)
)
Defendant.)

ORDER

Currently pending before this Court is defendant's Motion to Dismiss plaintiff's Complaint (Doc. No. 8). Plaintiff seeks judicial review of a cessation of disability insurance benefits and an overpayment under Title II of the Social Security Act. Defendant seeks dismissal of plaintiff's Complaint because plaintiff has failed to exhaust administrative remedies. Defendant states that there is a pending request for reconsideration and a request for a formal hearing and that these requests have been pending since 1995. Due to unknown reasons, defendant states that the agency has not yet acted on these requests. However, defendant contends that the agency should be allowed to correct its own errors, which may eliminate the need for judicial involvement altogether. Defendant further states that the agency counsel has been informed by the Appeals Council that it will send a memorandum to the Social Security Administration (SSA) field office responsible for acting on these requests and advise the field office that action needs to be taken. Because these requests are still pending, plaintiff has not received a "final decision" of the Commissioner as required to obtain judicial review under 42 U.S.C. § 405(g). Thus, defendant argues this

Court has no subject matter jurisdiction to hear plaintiff's claim.

Plaintiff responds that since these requests have been pending since 1995, plaintiff argues there has been unreasonable delay. Plaintiff believes there has been an exhaustion of administrative remedies by claimant's filing of a request for reconsideration and a request for a formal hearing on August 14, 1995, September 23, 1996, November 12, 1997, October 1, 1998, and on September 20, 2001. Plaintiff further states that the SSA did not respond to any of plaintiff's requests before the filing of this action on August 8, 2007.

The Court finds while plaintiff has made several attempts to procure a final decision from the Commissioner, plaintiff does not have yet have a final decision as required under 42 U.S.C. § 405(g) because there are still pending requests. The Court recognizes that plaintiff has no final decision yet from the Commissioner because defendant has unreasonably delayed the review of plaintiff's 1995 requests for reconsideration and a formal hearing and such is not the fault of plaintiff. However, the Court has no jurisdiction to hear this matter until there is a final decision. Therefore, the Court hereby **GRANTS** defendant's motion to dismiss (Doc. No. 8) plaintiff's Complaint **without prejudice**.

IT IS SO ORDERED.

Date: 11/30/07
Kansas City, Missouri

S/ FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
Chief United States District Judge